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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

OCT 25 2005

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WILLIAM CARTER and JANET
CARTER, husband and wife,

Plaintiffs,

v.

DANA CORPORATION, a foreign
corporation and DANA
CORPORATION INCOME
PROTECTION PLAN,

Defendants.

NO. CV-05-0102-FVS

STIPULATION AND PROTECTIVE
ORDER

STIPULATION AND PROTECTIVE
ORDER - 1

[55117-0035-000000/BA052870 008]

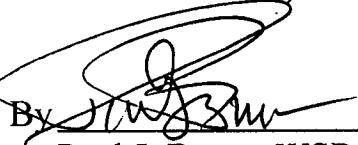
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I. STIPULATION

The parties hereby stipulate to the terms of the following Protective Order and agree that it may be entered by the Court without further notice of presentation to any party.

DATED this 18 day of October, 2005.

PAUL J. BURNS, P.S.

By 

Paul J. Burns, WSBA #13320
Attorneys for Plaintiffs William Carter
and Janet Carter

PERKINS COIE LLP

By 

Donald W. Heyrich, WSBA #23091
Branda N. Andrade, WSBA #30653
Attorneys for Defendants Dana
Corporation and the Dana Corporation
Income Protection Plan

**STIPULATION AND PROTECTIVE
ORDER - 2**

[55117-0035-000000/BA052870 008]

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II. ORDER

Pursuant to the foregoing stipulation of the parties and to Federal Rule of Civil Procedure 26(c), it is hereby ordered that the following provisions shall apply to all discovery in this litigation:

1. This Protective Order shall apply whether the materials or documents have been produced pursuant to formal discovery, by subpoena or by agreement.

2. The term "documents" as hereinafter used includes but is not limited to written, photographic or electronic media extracts, summaries thereof and attachments thereto; answers to interrogatories; requests for admission and answers thereto; deposition transcripts and exhibits; answers to requests for production; and any portions of Court papers which quote from or summarize any of the foregoing.

3. All documents, information and/or similar materials produced in this litigation, or specific portions thereof, may be marked or otherwise designated by the parties as "confidential" if:

- (a) They contain financial or other proprietary information that is held confidential by any party;
- (b) They are part of an individual's personnel records or similar file, including employee applications and the individual's identifying information such as his or her name, address, telephone number, or social security number, that a party to this litigation treats as confidential;

- 1 (c) The producing party is under an obligation to protect such
2 materials pursuant to protective orders in other actions or
3 confidentiality agreements.
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6 (d) They describe, contain or disclose internal company information
7 that is legitimately held confidential within the company; or
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10 (e) They contain medical records or other health care information,
11 even if health care information is produced by a third party
12 pursuant to stipulation or subpoena.
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16 The determination of whether produced materials fall into one of the above
17 categories shall be made in the first instance by the party from whom discovery
18 is sought. In the event opposing counsel believes that any produced materials
19 so designated as confidential are not within the scope of this Protective Order,
20 counsel for both parties shall confer in an effort to resolve the matter. If a
21 disagreement remains between the parties as to whether particular produced
22 materials have been properly designated as "confidential," the dispute may be
23 resolved by the Court.
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32 4. The parties recognize that experience may disclose that further
33 categories of documents should also be treated as "confidential." Entry of this
34 Protective Order does not foreclose further agreements by counsel to keep
35 documents confidential or application to the Court for protection of other
36 confidential information.
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42 5. If any party determines to mark information as confidential, that
43 shall be done by stamping each confidential page of documents with the notice
44 "confidential" prior to its production or, in the case of documents produced by
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STIPULATION AND PROTECTIVE
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1 non-parties to this litigation, within thirty (30) days of their receipt by counsel
2 of record, the party requesting protection under this order shall notify opposing
3 counsel in writing for which documents it is requesting a designation of
4 "confidential" under this order. In the case of nondocumentary materials,
5 "confidential" shall be marked prominently on the item. Plaintiffs' medical
6 records shall be considered "confidential" when received regardless of whether
7 they have been stamped confidential.
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10 6. Except as expressly provided for in this Protective Order,
11 "confidential" materials and documents and any information contained therein
12 shall not be communicated or disclosed in any manner, either directly or
13 indirectly, to any person or entity and shall be used only for the prosecution
14 and/or defense of this litigation and for no other purpose. Notwithstanding the
15 preceding, nothing in the Protective Order shall in any way limit or preclude
16 any party from using any of the files, records, information or materials created
17 or maintained for any of the business purposes for which they were created or
18 maintained. In addition, this Protective Order does not preclude defendants
19 from using any "confidential" documents or information produced by
20 defendants to plaintiffs in this action, to defend their position in other litigation,
21 provided that if the confidential documents or information which defendants
22 are attempting to use in other litigation relates to personal information or
23 documents regarding the plaintiffs, then defendants agree that they will make a
24 good faith effort to obtain a Protective Order similar to this one to protect the
25 confidentiality of the plaintiffs' personal information. The same provision
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STIPULATION AND PROTECTIVE
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[55117-0035-000000/BA052870 008]

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1 applies to plaintiffs' productions. This provision does not serve as a release of
2 any information defendants hold or obtain about plaintiffs.
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4 7. "Confidential" documents may be referred to in interrogatory
5 answers, motions and/or briefs and may be used in depositions and marked as
6 deposition exhibits or trial exhibits in this litigation. Each party shall give the
7 other parties the best practical notice of his/her or its intent to file
8 "confidential" documents or information, so the other parties may move to
9 compel filing of the "confidential" material under seal, if they wish. The
10 parties will cooperate to ensure the motion is heard before the "confidential"
11 material is filed. Such cooperation will include agreeing to shorten time for
12 notice of the motion.
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22 8. Except as provided above or pursuant to Court order,
23 "confidential" documents shall not be disclosed to anyone except:
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- 26 (a) The parties, their attorneys of record and their employees involved
27 in the conduct of this litigation, and any mediator mutually agreed
28 by the parties;
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30 (b) Any person who was an author or addressee of the document or
31 who is shown on the document as having received a copy of it, or
32 whose personnel file it is;
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34 (c) The Court, jury, Court personnel, Court reporters and similar
35 Court personnel, trial witnesses giving courtroom testimony, and
36 mediators;
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38 (d) Any deposition in this litigation when shown to such witness
39 before or during his or her testimony, provided the confidential
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STIPULATION AND PROTECTIVE
ORDER - 6

[55117-0035-000000/BA052870 008]

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1 item shown to the witness has a reasonable and bona fide
2 relationship to his or her testimony and subject to paragraph 11
3 below;
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6 (e) Consultants and experts retained by any party for purposes of
7 assisting in the preparation, investigation or presentation of claims
8 or defenses in this litigation;
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11 (f) Those current or former employees, officers and/or directors of
12 defendants Dana Corporation and Dana Corporation Income
13 Protection Plan who are assisting in prosecuting or defending this
14 claim.
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18 9. Prior to being shown "confidential" documents, any person falling
19 within paragraph 8(d) through 8(f) hereof shall agree in writing to be bound by
20 the terms of this order by signing an agreement to be found in the form of
21 Attachment A hereto.
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24 10. A deponent may, before or during the deposition, be shown and
25 examined about stamped "confidential" documents subject to the terms of this
26 Protective Order.
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29 11. Any party may either during a deposition, or within twenty one
30 (21) days after the date the deposition is held, designate portions of that
31 deposition, and exhibits thereto not already designated confidential, as
32 "confidential." Confidential information within the deposition shall be
33 described by subject matter, if a transcript is not available, or may be
34 designated by underlining the portions of the pages that are confidential and
35 marking such pages with substantially the following legend: "Confidential –
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STIPULATION AND PROTECTIVE
ORDER - 7

[55117-0035-000000/BA052870 008]

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1 subject to protection pursuant to Court order." Until the expiration of the 21-
2 day period, the entire deposition will be treated as subject to protection against
3 disclosure under this Order unless all parties agree that no confidential
4 information is at issue. In the event opposing counsel believes that any
5 deposition passage so designated as confidential is not within the scope of this
6 Protective Order, counsel for both parties shall confer in an effort to resolve the
7 matter. If counsel are unable to resolve their differences, the dispute may be
8 resolved by the Court. Disputed documents shall remain confidential pending
9 determination of their status by the Court. If a party does not timely designate
10 confidential information in a deposition, then none of the transcript or its
11 exhibits not previously designated as confidential will be treated as confidential
12 unless otherwise agreed by the parties or ordered by the Court. Nothing in this
13 Protective Order shall limit the use of any deposition testimony or exhibits
14 designated "confidential" in open court at any hearing in or during the trial of
15 this litigation, provided that such use shall not relieve the parties from their
16 obligations under this order.
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32 12. No later than sixty (60) days following the "conclusion of these
33 proceedings," as defined below, the recipient party shall return all
34 "confidential" material to counsel for the producing party, together with all
35 abstracts, copies and other documents containing any information contained
36 within the documents, including those portions of depositions designated as
37 confidential pursuant to the Protective Order. "Conclusion of these
38 proceedings" refers to the conclusion of this matter by trial or settlement and, if
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STIPULATION AND PROTECTIVE
ORDER - 8

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1 concluded by trial, the exhaustion of available appeals or the running of time
2 for taking such appeals, as provided by applicable law.
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4 15. Either party may seek modification of this Order upon motion and
5 for good cause shown, by alleging specific changes and specific grounds.
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7 16. The parties expressly acknowledge and agree that all remedies
8 under Federal Rule of Civil Procedure 37 will be available to the Court, in its
9 discretion, to sanction any violation of this order.
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11 DONE IN OPEN COURT this 24th day of October,
12 2005.
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The Honorable Fred Van Sickle
United States District Court Judge

STIPULATION AND PROTECTIVE
ORDER - 9

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ATTACHMENT A

I, _____, have been advised by counsel of record for plaintiffs or defendants (circle one) in the matter of WILLIAM CARTER and JANET CARTER v. DANA CORPORATION and DANA CORPORATION INCOME PROTECTION PLAN, United States District Court for the Eastern District of Washington Case Number CV-05-0102-FVS, of the Protective Order governing delivery, exhibition, publication or disclosure to me of confidential documents and information produced in this litigation, together with the information contained therein. I have read a copy of said Protective Order and agree to abide by its terms, including its limitation on any further delivery, exhibition, publication or disclosure of documents and information subject to the order.

DATED this ____ day of _____, 200__.

STIPULATION AND PROTECTIVE
ORDER - 1

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